TITLE 89: SOCIAL SERVICES
CHAPTER I: DEPARTMENT OF PUBLIC AID
SUBCHAPTER b: ASSISTANCE PROGRAMS

PART 119
PHARMACEUTICAL ASSISTANCE PROGRAM

Section

AUTHORITY: Implementing the Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act[320 ILCS 25] and implementing and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13] and Executive Order 2004-3.

SOURCE: Adopted by emergency rulemaking at 28 Ill. Reg. 13816, effective October 1, 2004, for a maximum of 150 days; adopted at 29 Ill. Reg. _____, effective February 25, 2005.

Section 119.10 Purpose of the Pharmaceutical Assistance Program

The Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act (Act) [320 ILCS 25] provides for the establishment of a program of pharmaceutical assistance to be administered by the Department of Revenue. Executive Order 2004-3 transfers this Program to the Department on Aging and Department of Public Aid, effective July 1, 2004. The purpose for this Program is to enable low-income senior citizens and disabled persons to afford medication for the treatment of heart disease and its related conditions, diabetes and arthritis; and, beginning January 1, 2001, cancer, Alzheimer's disease, Parkinson's disease, glaucoma, lung disease and smoking related illnesses; and, beginning July 1, 2001, osteoporosis; and, beginning January 1, 2004, multiple sclerosis.

Section 119.20 Definitions

The following definitions apply to the terms used in this Part:

"Act" means the Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act [320 ILCS 25].

"Additional resident" means any person who is not filing a separate claim for the same claim year under this Act and who is living in the same residence with a claimant and for whom the household has provided more than half of that person's total financial support for a claim year.

"Applicant" means a claimant, any person in a household who has requested pharmaceutical assistance benefits on a claim filed by a claimant and any additional resident who would become a beneficiary if the claim is approved by the Department on Aging.

"Beneficiary" means a person whose claim for pharmaceutical assistance benefits under the Act has been approved by the Department on Aging.

"Card" means an identification card issued to a Beneficiary by the Department of Revenue prior to January 1, 2001, and a Pharmaceutical Assistance Card issued to a Beneficiary by the Department of Revenue on and after January 1, 2001 and a Pharmaceutical Assistance Card issued to a Beneficiary by the Department on Aging on and after July 1, 2004.

"Claim" means an original paper application (Form No. IL-1363, possibly using Schedule A, Schedule B, and/or Schedule P), an amended paper application (Form No. I.-1363-X), or an electronic application filed by a verified Internet Filer for pharmaceutical assistance benefits under the Act.

"Claimant" means a person who has filed a claim for pharmaceutical assistance benefits under the Act [320 ILCS 25/3.01].

"Claim year" means the calendar year prior to the year in which an applicant files a claim for pharmaceutical assistance benefits.
"Coverage year" means the period of time during which a Beneficiary receives pharmaceutical assistance benefits for a claim year.

"Covered prescription drug" means any drug included in the categories listed in Section 119.30 for which the Department on Aging approves a claim for pharmaceutical assistance benefits.

"Current income" means household income for a claim year unless an applicant requests and is allowed by the Department on Aging to use projected income for a coverage year.

"Department" means the Illinois Department of Public Aid.

"Director" means the Director of the Illinois Department of Public Aid.

"Disabled person" means a person who is unable to engage in any substantial gainful activity by reason of medically determinable physical or mental impairment that can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months. [320 ILCS 25/3.14]

"Disease" means a chronic and possibly recurrent illness of long duration, as distinguished from an acute illness that is of short duration with recovery due to limited medical treatment (such as in the case of colds, flu, pneumonia, bronchitis, or other similar illnesses).

"Electronic application" means the electronic document set forth in subsection (a) of 86 Ill. Adm. Code 530.305.

"Household" means a claimant or a claimant and his or her spouse living together in the same residence. [320 ILCS 25/3.05]

"Household income" means the combined income of the members of a household for a claim year. [320 ILCS 25/3.06]

"Program" means the Pharmaceutical Assistance Program provided for under the Act.

"Projected income" means household income expected to be received for a coverage year.

"Verified Internet Filer" means a person who meets the eligibility qualifications under 86 Ill. Adm. Code 530.310(b) and receives a confirmation number from the Department on Aging acknowledging transmission of a timely filed electronic application.

Section 119.30 Covered Prescription Drugs

a) Drugs that fall within the following categories and are prescribed by a physician licensed to practice medicine in all of its branches pursuant to the Medical Practice Act [225 ILCS 60], physician assistant licensed pursuant to the Physician Assistant Practice Act [225 ILCS 95], or advanced practice nurse licensed pursuant to Title 15 of the Nursing and Advanced Practice Nursing Act [225 ILCS 65/Title 15] for treatment of heart disease and its related conditions, qualify for inclusion in the Pharmaceutical Assistance Program as covered prescription drugs:

1) Antihypertensives

2) Antianginals

3) Antiarrhythmics

4) Antihyperlipidemics

5) Beta Blockers

6) Digitalis Glycosides

7) Hypertension/Shock

8) Diuretics

9) Potassium

10) Anticoagulants

b) Drugs purchased on or after January 1, 1987, which fall within the following categories and are prescribed by a physician licensed to practice medicine in all of its branches pursuant to the Medical Practice Act, physician assistant licensed pursuant to the Physician Assistant Practice Act, or advanced practice nurse licensed pursuant to Title 15 of the Nursing and Advanced Practice Nursing Act for the treatment of diabetes, qualify for inclusion in the Pharmaceutical Assistance Program as covered prescription drugs:

1) Insulin

2) Insulin, Syringes and Needles

3) Oral Hypoglycemics

4) Pituitary Hormones

5) Glucose Elevators

c) Drugs purchased on or after January 1, 1987, which fall within the following categories and are prescribed by a physician licensed to practice medicine in all of its branches pursuant to the Medical Practice Act, physician assistant licensed pursuant to the Physician Assistant Practice Act, or advanced practice nurse licensed pursuant to Title 15 of the Nursing and Advanced Practice Nursing Act for the treatment of arthritis, qualify for inclusion in the Pharmaceutical Assistance Program as covered prescription drugs:

1) Hormones/Adrenal Cortical Steroids

2) Analgesics/Antirheumatics

3) Analgesics/Nonopiate Agonists

4) Antiprotozoals

5) Penicillamine

6) Analgesics/Narcotic Antagonists: Gout

7) Oncolytic/Antineoplastic: Antimetabolites

8) Immunosuppressives

d) Drugs purchased on or after January 1, 2001, which fall within the following categories and are prescribed by a physician licensed to practice medicine in all of its branches pursuant to the Medical Practice Act, physician assistant licensed pursuant to the Physician Assistant Practice Act, or advanced practice nurse licensed pursuant to Title 15 of the Nursing and Advanced Practice Nursing Act for the treatment of cancer, qualify for inclusion in the Pharmaceutical Assistance Program as covered prescription drugs:

1) Alkylating Agents

2) Antimetabolites

3) Antimitotic Agents

4) Epipodophyllotoxins

5) Antibiotics

6) Hormones

7) Enzymes

8) Platinum Coordination Complexes

9) Anthracenedione

10) Substituted Ureas

11) Methylhydrazine Derivatives

12) Cytoprotective Agents

13) DNA Topoisomerase Inhibitors

14) Biological Response Modifiers

15) Retinoids

16) Monoclonal Antibodies

17) Miscellaneous Antineoplastics

18) Narcotic Agonist Analgesics

19) Narcotic Analgesic Combinations

20) Anticonvulsants

e) Cholinesterase Inhibitor drugs purchased on or after January 1, 2001, which are prescribed by a physician licensed to practice medicine in all of its branches pursuant to the Medical Practice Act, physician assistant licensed pursuant to the Physician Assistant Practice Act, or advanced practice nurse licensed pursuant to Title 15 of the Nursing and Advanced Practice Nursing Act for the treatment of

Alzheimer's disease, qualify for inclusion in the Pharmaceutical Assistance Program as covered prescription drugs.

f) Drugs purchased on or after January 1, 2001, which fall within the following categories and are prescribed by a physician licensed to practice medicine in all of its branches pursuant to the Medical Practice Act, physician assistant licensed pursuant to the Physician Assistant Practice Act, or advanced practice nurse licensed pursuant to Title 15 of the Nursing and Advanced Practice Nursing Act for the treatment of Parkinson's disease, qualify for inclusion in the Pharmaceutical Assistance Program as covered prescription drugs:

1) Anticholinergics

2) Amantadine

3) Bromocriptine Mesylate

4) Carbidopa

5) Levodopa

6) Levodopa and Carbidopa

7) Pergolide Mesylate

8) Selegiline Hydrochloride

9) Entacapone

10) Tolcapone

11) Dopaminergics

12) Clonazepam

g) Drugs purchased on or after January 1, 2001, which fall within the following categories and are prescribed by a physician licensed to practice medicine in all of its branches pursuant to the Medical Practice Act, therapeutically certified optometrist licensed pursuant to the Illinois Optometric Practice Act [225 ILCS 80/15.1], physician assistant licensed pursuant to the Physician Assistant Practice Act, or advanced practice nurse licensed pursuant to Title 15 of the Nursing and Advanced Practice Nursing Act for the treatment of glaucoma, qualify for

inclusion in the Pharmaceutical Assistance Program as covered prescription drugs:

1) Alpha-2 Adrenergic Agonists

2) Sympathomimetics

3) Alpha-Adrenergic Blocking Agents

4) Beta-Adrenergic Blocking Agents

5) Miotics, Direct Acting

6) Miotics, Cholinesterase Inhibitors

7) Carbonic Anhydrase Inhibitors

8) Prostaglandin Agonists

9) Miscellaneous Combinations

h) Drugs purchased on or after January 1, 2001, which fall within the following categories and are prescribed by a physician licensed to practice medicine in all of its branches pursuant to the Medical Practice Act, physician assistant licensed pursuant to the Physician Assistant Practice Act, or advanced practice nurse licensed pursuant to Title 15 of the Nursing and Advanced Practice Nursing Act for the treatment of lung disease and smoking related illnesses, qualify for inclusion in the Pharmaceutical Assistance Program as covered prescription drugs:

1) Sympathomimetic Bronchodilators

2) Diluents

3) Xanthine Derivatives

4) Anticholinergic Bronchodilators

5) Leukotriene Receptor Antagonists

6) Leukotriene Formation Inhibitors

7) Corticosteroid Respiratory Inhalants

8) Mucolytics

9) Mast Cell Stabilizers

10) Respiratory Enzymes

11) Digestive Enzymes

12) Antiasthmatic Combinations

13) Antituberculosal Agents

14) Zyban

15) Nicotine

i) Drugs purchased on or after January 1, 2001, which fall within the following categories and are prescribed by a physician licensed to practice medicine in all of its branches pursuant to the Medical Practice Act of 1987, physician assistant licensed pursuant to the Physician Assistant Practice Act of 1987, or advanced practice nurse licensed pursuant to Title 15 of the Nursing and Advanced Practice Nursing Act for the treatment of osteoporosis, qualify for inclusion in the Pharmaceutical Assistance Program as covered prescription drugs:

1) Bisphosphonates

2) Selective Estrogen Receptor Modulator

3) Calcitonin-Salmon

j) Drugs purchased on or after January 1, 2004, that fall within the following categories and are prescribed by a physician licensed to practice medicine in all of its branches pursuant to the Medical Practice Act, physician assistant licensed pursuant to the Physician Assistant Practice Act, or advanced practice nurse licensed pursuant to Title 15 of the Nursing and Advanced Practice Nursing Act for the treatment of multiple sclerosis, qualify for inclusion in the Pharmaceutical Assistance Program as covered prescription drugs:

1) Corticosteroids

2) Immunomodulatory Agents (including Interferon Beta − 1a and Interferon Beta − 1b)

3) Immunosuppressants

4) Antineoplastics

k) A covered prescription drug must be approved by the Food and Drug Administration of the federal Department of Health and Human Services for the treatment of a specific disease category.

l) The specific covered prescription drugs that fall within each category will be listed in a handbook to be prepared and disseminated on the internet Web site of the Department. Updates regarding changes in the categories and specific covered prescription drugs will be made as necessary.

Section 119.40 Automatic Enrollment of Program Beneficiaries

The Department may auto-enroll beneficiaries with a Medicare discount card sponsor authorized under the federal Medicare Modernization Act of 2003 (42 USC 1395w-101 et seq.) if the member is potentially eligible for Transitional Assistance under the Medicare Modernization Act (42 USC 1395w-141). The Department shall enroll the eligible beneficiaries into the discount card program sponsored by the claims administrator for the Program in order to coordinate the members' Medicare prescription drug benefit coverage with coverage under the Program.

Section 119.50 Fees and Co-Payments

a) Fees

1) An applicant must pay a fee to the Department on Aging for a card as follows:

A) An applicant must pay $5 for a card if his or her household income for a claim year is below the poverty line.

B) An applicant must pay $25 for a card if his or her household income for a claim year is at or above the federal poverty line. (See 320 ILCS 25/4(f).)

2) The term "poverty line" means the official poverty line as defined by the Federal Office of Management and Budget at 42 USC 9902(2).

3) Fees paid for cards will not be prorated if coverage is valid for a longer or shorter period than one year as determined by the Department on Aging in converting coverage to a fiscal year basis.

b) Covered Prescription Drug Co-Payments

1) A Beneficiary must make co-payments to an authorized pharmacy for covered prescription drugs as follows:

A) A Beneficiary who pays $5 for a card will pay no additional prescription costs until the accumulated total paid by this Program reaches $2,000 for the State fiscal year, at which point the Beneficiary must pay a co-payment equal to 20 percent of the cost of each prescription paid for by this Program for the remainder of the State fiscal year.

B) A Beneficiary who pays $25 for a card must pay $3 for each prescription until the accumulated total paid by this Program reaches $2,000 for the State fiscal year, at which point the Beneficiary must continue to pay $3 for each prescription plus a co-payment equal to 20 percent of the cost of each prescription paid for by this Program for the remainder of the State fiscal year. (See 320 ILCS 25/4(f).)

2) A Beneficiary also must pay to an authorized pharmacy an ancillary charge for any covered prescription drug that is a brand name product if the pharmacy is reimbursed at the generic price as provided in Section 119.60(d)(2).

Section 119.60 Determination of Cost of Covered Prescription Drugs

a) The Department will pay an authorized pharmacy the reasonable cost of pharmaceutical services that such pharmacy provided to a Beneficiary pursuant to a physician's oral or written prescription authorization.

b) Determination of Reasonable Cost. For contracts executed and in effect on or after July 1, 2002, the Department will determine the rate for the reasonable cost of covered prescription drugs for which payment will be made to an authorized pharmacy in an amount equal to:

1) the lesser of:

A) the Average Wholesale Price (AWP) for the covered prescription drug minus 14 percent, based on the National Drug Code (NDC) number for the original package size from which such drug was dispensed (AWP is determined by the most current information provided by drug pricing services such as First DataBank or other source nationally recognized in the retail prescription drug industry selected by the Department's claims processing vendor); or

B) the Maximum Allowable Cost (MAC) for the covered prescription drug, based on the MAC list for this Program (MAC is determined by the Department's claims processing vendor); or

C) the usual and customary cost for the covered prescription drug; plus

2) the professional dispensing fee; less

3) any applicable co-payments, deductibles, and ancillary charges.

c) Professional Dispensing Fee. For contracts executed and in effect on or after July 1, 2002, the Department shall determine the professional dispensing fee to be charged by authorized pharmacies. The professional dispensing fee shall be in the amount of $2.55 per prescription.

d) Payment

1) Payment to authorized pharmacies will be allowed for covered prescription drugs legally marketed in accordance with the rules and regulations of the

Food and Drug Administration of the federal Department of Health and Human Services.

2) Payment will be at the generic price as provided in subsection (b) unless the following conditions exist:

A) an oral prescription is filled, refilled, or renewed for a covered prescription drug that is a brand name product for which no generic equivalent is available; or

B) a written prescription is filled, refilled, or renewed for a covered prescription drug that is a brand name product for which no generic equivalent is available; or

C) beginning January 1, 2001, an oral prescription is filled, refilled, or renewed for a covered prescription drug that is a brand name product containing one or more ingredients defined as a narrow therapeutic index drug at 21 CFR 320.33 and the prescriber stipulates "brand medically necessary" and that substitution is not permitted; or

D) beginning January 1, 2001, a written prescription is filled, refilled, or renewed for a covered prescription drug that is a brand name product containing one or more ingredients defined as a narrow therapeutic index drug at 21 CFR 320.33 and indicates on its face "brand medically necessary" and that substitution is not permitted.

e) Pharmacy's Cost of On-line Communications. Each authorized pharmacy participating in this Program shall pay all costs, charges and fees incurred by the pharmacy that are related to on-line communication and the processing of claims or other information sent to or from the Department or the Department's claims processing vendor.

f) The reasonable cost of covered prescription drugs available to beneficiaries in this Program shall not exceed the cost of such drugs when dispensed to the general public.

g) In the event that generic equivalents for covered prescription drugs are available at lower cost, the Department shall establish the maximum allowable cost for such covered prescription drugs at the lower generic cost as provided in subsection (b).

Section 119.70 Authorized Pharmacy Qualifications

Only pharmacies that are registered in Illinois under the Pharmacy Practice Act [225 ILCS 85] are authorized pharmacies eligible to participate in this Program. (See 320 ILCS 25/6(d).)

Section 119.80 Assignment and Coordination of Benefits

a) Where a Beneficiary is entitled to benefits from any private plan of assistance, including any insurance plan, public assistance program, or third party for covered prescription drugs under this Program, he or she must execute an assignment of those benefits to the Department. (See 320 ILCS 25/6(d)(4).)

b) The Department shall charge or collect payments from any private plan of assistance, including any insurance plan, public assistance program, or third party for any claims assigned by a Beneficiary. (See 320 ILCS 25/4(f) and 6(d).)

Section 119.90 Payments to Authorized Pharmacies

Payments to authorized pharmacies under the Act shall be made in accordance with the State Prompt Payment Act [30 ILCS 540]. [320 ILCS 25/6(d)(7)]

Section 119.100 Execution of Contracts

a) The Director or his or her designee has the authority to enter into written contracts with any State agency, instrumentality or political subdivision, or a fiscal intermediary for the purpose of making payments to authorized pharmacies who participate in this Program and coordinating this program with other public assistance programs. [320 ILCS 25/6(d)]

b) Contracts entered into by or on behalf of the Department and authorized pharmacies shall stipulate the terms and conditions for participation in this Program and the right of the Department to terminate participation for breach of contract or violation of federal or State law. [320 ILCS 25/6(d)(1)]

Section 119.110 Limitation on Prescription Size

An authorized pharmacy may not provide a Beneficiary with more than a 34-day supply of any covered prescription drug in filling, refilling, or renewing a prescription, except as otherwise specified for medical or utilization control reasons in the handbook and this Part prepared and disseminated on the internet Web site of the Department. [320 ILCS 25/6(d)(2)] Such an exception is specified in the handbook for covered prescription drugs classified as maintenance drugs that are less expensive to dispense in greater quantities due to larger daily dose requirements.

Section 119.120 Inspection and Disclosure of Records

a) In order to ensure compliance with the requirements of the Act and to prevent fraud, the Department, or its designee, shall have the right:

1) *to inspect the books and records of all authorized pharmacies* [320 ILCS 25/6(d)(5)]; and

2) *to require disclosure of information on individuals who receive health coverage, pharmaceutical benefits, or related services as policyholders, subscribers, or plan participants from entities subject to the Illinois Insurance Code* [215 ILCS 5], *Comprehensive Health Insurance Plan Act* [215 ILCS 105], *Dental Service Plan Act* [225 ILCS 25], *Children's Health Insurance Program Act* [215 ILCS 106], *Health Care Purchasing Group Act* [215 ILCS 123], *Health Maintenance Organization Act* [215 ILCS 125] *Limited Health Service Organization Act* [215 ILCS 130], *Voluntary Health Services Plans Act* [215 ILCS 165], *and Worker's Compensation Act* [820 ILCS 305].

b) *Information received by the Department or its designee shall be confidential except for official purposes and as otherwise provided in the Act.* [320 ILCS 25/4.1]

Section 119.130 Establishment of Liens

The Director is entitled to establish a lien on any and all causes of action which accrue to a Beneficiary as a result of injuries for which covered prescription drugs are directly or indirectly prescribed and for which payment was made under this program. [320 ILCS 25/6(d)(3)]

Section 119.140 Penalties

a) *Any person who takes either of the following actions is guilty of a Class 4 felony for the first offense and a Class 3 felony for each subsequent offense:*

1) *on behalf of an authorized pharmacy, files a fraudulent claim for payment; or*

2) *fraudulently uses a card to obtain covered prescription drugs.* [320 ILCS 25/9]

b) *The Department, in cooperation with the Department on Aging, will recover from any beneficiary or authorized pharmacy any amount paid under this program on account of an erroneous or fraudulent claim, together with 6 percent interest per year.*

c) *A prosecution for violation of the provisions of the Act may be undertaken at any time within three years after the commission of that violation.* [320 ILCS 25/9]